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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
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9 KARL W. SCHENKER,

10 Plaintiff,

11 vs.

12 RENE BAKER, et al.,

13 Defendants.
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Case No. 3:12-cv-00679-HDM-VPC

ORDER

15 Plaintiff has submitted an application to proceed in forma
16 pauperis (#1) and a petition for a writ of mandamus. The court
17 dismisses this action for two reasons.

18 First, plaintiff has completed the application (#1)
19 incorrectly. On the financial certificate, plaintiff marked that
20 he is pursuing a petition for a writ of habeas corpus, for which
21 the filing fee is \$5.00. However, for all civil actions other than
22 habeas corpus petitions, the filing fee is \$350.00. Petitioner
23 will need to commence a new action in which he completes the
24 application to proceed in forma pauperis correctly.

25 Second, mandamus is not suitable for the nature of this
26 action. Plaintiff alleges that he is indigent and that prison
27 officials are not providing him with pen, paper, and postage to
28 draft legal documents and mail them to the court. Plaintiff does

1 have a right of access to the courts, which is violated if he can
2 demonstrate an actual injury such as an inability to file a non-
3 frivolous claim. Lewis v. Casey, 518 U.S. 343, 348-53 (1996). The
4 court does have the authority to issue a writ of mandamus pursuant
5 to the All Writs Act, 28 U.S.C. § 1651, in extraordinary
6 circumstances.

7 The All Writs Act is a residual source of authority to issue
8 writs that are not otherwise covered by statute. Where a
9 statute specifically addresses the particular issue at hand,
10 it is that authority, and not the All Writs Act, that is
11 controlling. Although that Act empowers federal courts to
fashion extraordinary remedies when the need arises, it does
not authorize them to issue ad hoc writs whenever compliance
with statutory procedures appears inconvenient or less
appropriate.

12 Pennsylvania Bureau of Corr. v. U.S. Marshals Serv., 474 U.S. 34,
13 42-43 (1985). This court has the authority to fashion a remedy to
14 any violations of plaintiff right of access to the courts through a
15 civil rights action pursuant to 42 U.S.C. § 1983. If plaintiff
16 wishes to pursue his claims, then he should commence a civil rights
17 action pursuant to 42 U.S.C. § 1983. Plaintiff also needs to use
18 the court's complaint form, as required by Local Rule LSR 2-1.

19 IT IS THEREFORE ORDERED that the application to proceed in
20 forma pauperis (#1) is **DENIED** without prejudice.

21 IT IS FURTHER ORDERED that the clerk of the court shall send
22 plaintiff a blank form for an application to proceed in forma
23 pauperis for incarcerated litigants and a blank civil rights
24 complaint form with instructions.

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1 IT IS FURTHER ORDERED that this action is **DISMISSED** without
2 prejudice to plaintiff's commencement of a new action in which he
3 uses the court's complaint form and either pays the filing fee in
4 full or submits a complete application to proceed in forma
5 pauperis, accompanied by a signed financial certificate and a
6 statement of his inmate account. The clerk of the court shall
7 enter judgment accordingly.

8 DATED: December 28, 2012.

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HOWARD D. MCKIBBEN
United States District Judge
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